

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BENJAMIN JAMES O'DONNELL,

Defendant-Appellant.

UNPUBLISHED

April 19, 2005

No. 252567

Calhoun Circuit Court

LC No. 94-001864-FC

Before: Cavanagh, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Defendant appeals by leave granted from a trial court order denying his motion for relief from judgment. We reverse and remand.

Defendant's convictions arise from an incident that occurred at a Meijer store in Battle Creek. One of his codefendants removed a pair of boots from the store while defendant acted as a lookout. After leaving the store, security officers stopped them, and defendant removed a handgun from his coat, pointing it at one of the guards. His codefendant took the gun and fired several gunshots at the security officers and bystanders, but nobody was injured.

Defendant was convicted by a jury of three counts of assault with intent to commit murder, MCL 750.83, four counts of possession of a firearm during the commission of a felony, MCL 750.227b, one count of armed robbery, MCL 750.529, and one count of carrying a concealed weapon, MCL 750.227. Defendant appealed as of right his convictions to this Court, which affirmed. *People v O'Donnell*, unpublished opinion per curiam of the Court of Appeals, issued March 13, 1998 (Docket No. 182699). This Court applied the transactional approach to armed robbery, which provides that a taking is not considered complete until the assailant has accomplished his escape because the victim is still considered to be in possession of his property until that point. *Id.*, slip op at 2, applying *People v Newcomb*, 190 Mich App 424, 430-431; 476 NW2d 749 (1991) and *People v Valasquez*, 189 Mich App 14, 17; 472 NW2d 289 (1991). The Court concluded that the trial court's denial of defendant's motion to dismiss the armed robbery charge was proper because defendant used force to accomplish his escape with the stolen property. *O'Donnell*, *supra*, slip op at 2.

In the instant appeal, defendant argues that the trial court erred in refusing to apply the holdings of recent Michigan Supreme Court and Court of Appeals decisions retroactively. We

review de novo a question of whether a judicial decision should have retroactive application, which is a question of law. *People v Sexton*, 458 Mich 43, 52; 580 NW2d 404 (1998).

Defendant was convicted for acts that occurred on May 21, 1994. In 2002, the Michigan Supreme Court decided *People v Randolph*, 466 Mich 532; 648 NW2d 164 (2002). In *Randolph*, the Court rejected the transactional approach for unarmed robbery and held that “the force used to accomplish the taking underlying a charge of unarmed robbery must be contemporaneous with the taking.” *Id.* at 536. The force used later to escape and retain the stolen property is not included. *Id.* The *Randolph* Court observed that this Court had created the transactional approach doctrine over the preceding thirty years¹ and concluded that the doctrine strayed from the statutory language and its historical common-law context. *Id.* at 539. In 2003, this Court issued its opinion in *People v Scruggs*, 256 Mich App 303; 662 NW2d 849 (2003) and applied the reasoning of *Randolph* to the armed robbery statute. The Court concluded that MCL 750.529 does not allow for a conviction based on the transactional approach. *Scruggs, supra* at 310. To prove armed robbery, “the evidence must establish that the assault against the victim occurred before, or contemporaneous with, the taking of the property.” *Id.*

Generally, judicial decisions are given complete retroactive effect, and complete prospective application is limited to decisions that overrule clear and uncontradicted case law. *People v Doyle*, 451 Mich 93, 104; 545 NW2d 627 (1996). The *Doyle* Court found that the statutory provisions at issue were unambiguous, and its interpretation was neither unforeseeable nor new law. *Id.* at 103-104, 108. The Court concluded that anyone reading the statutory provisions at issue easily could have concluded that the prior Court of Appeals decision was contrary to the plain meaning of the provisions. *Id.* at 113.

Because the Michigan Supreme Court never recognized the transactional approach to robbery, *Randolph* represents a clarification of existing law. *Randolph, supra* at 540. *Randolph* does not constitute an overruling of clear and well-established case law, and it applies retroactively to the instant case. We therefore conclude that the trial court erred in refusing to apply *Randolph* and *Scruggs* retroactively and in denying defendant’s motion for relief from judgment. We reverse defendant’s armed robbery conviction and remand to the trial court for retrial on any and all appropriate lesser charges arising out of the events in question.

Reversed and remanded. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Hilda R. Gage

¹ The *Randolph* Court specifically overruled the following cases wherein this Court applied the transactional approach to robberies: *People v Tinsley*, 176 Mich App 119; 439 NW2d 313 (1989); *People v Turner*, 120 Mich App 23; 328 NW2d 5 (1982); *People v LeFlore*, 96 Mich App 557; 293 NW2d 628 (1980); and *People v Sanders*, 28 Mich App 274; 184 NW2d 269 (1970). *People v Randolph*, 466 Mich 532, 546; 648 NW2d 164 (2002).